

MANDATE

19-2217-cv
D'Amore v. City of New York

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of June, two thousand twenty.

PRESENT: PIERRE N. LEVAL,
RAYMOND J. LOHIER, JR.,
MICHAEL H. PARK,
Circuit Judges.

JOHN D'AMORE,

Plaintiff-Appellant,

v.

No. 19-2217-cv

CITY OF NEW YORK,

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT:

Ariel Y. Graff, Filosa Graff
LLP, New York, NY.

MANDATE ISSUED ON 06/25/2020

1 FOR DEFENDANT-APPELLEE:

Richard Dearing, Devin Slack,
2 Diana Lawless, *for* James E.
3 Johnson, Corporation Counsel
4 of the City of New York, New
5 York, NY.

6 Appeal from a judgment of the United States District Court for the Eastern
7 District of New York (Pamela K. Chen, *Judge*).

8 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
9 AND DECREED that the judgment of the District Court is AFFIRMED.

10 John D'Amore appeals from a judgment entered June 25, 2019 by the
11 United States District Court for the Eastern District of New York (Chen, L)
12 granting summary judgment in favor of the City of New York on D'Amore's
13 retaliation claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e
14 et seq. We assume the parties' familiarity with the underlying facts and the
15 record of prior proceedings, to which we refer only as necessary to explain our
16 decision to affirm.

17 In 2016 the New York City Department of Correction (DOC) hired
18 D'Amore to join one of its investigative teams responsible for reviewing
19 allegations of sexual assault made against inmates or DOC staff members. To

1 ensure that its investigative teams “had some balance of male and female
2 investigators,” DOC stationed D’Amore at the George R. Vierno Center (GRVC)
3 on Rikers Island. Appellee’s Br. 4. Shortly after D’Amore learned of his
4 assignment to the GRVC, he complained to his superiors that he believed that the
5 assignment was made for “improper” reasons. Joint App’x 257. Hours later,
6 D’Amore was fired. D’Amore filed this suit, alleging that DOC’s decision to fire
7 him violated the anti-retaliation provisions of Title VII. The District Court
8 rejected D’Amore’s claim, concluding that “no reasonable jury could find that”
9 (1) D’Amore “engaged in protected activity” or that (2) DOC “was aware of that
10 activity.” Special App’x 9. D’Amore challenges both conclusions on appeal.
11 Based upon our review of the record, we conclude that D’Amore failed to
12 establish a prima facie case of unlawful retaliation, and we accordingly reject
13 D’Amore’s argument to the contrary.

14 We have considered D’Amore’s remaining arguments and conclude that
15 they are without merit. For the foregoing reasons, the judgment of the District
16 Court is AFFIRMED.

17 FOR THE COURT:

18 Catherine O’Hagan Wolfe, Clerk of Court

A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit





